

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
HARRY SOUKIASSIAN)	File Nos.: 657781, 659870,
)	659871 & 659872
Applications for New Private Carrier)	
Paging Facilities on the Frequency)	
929.8375 MHz)	

MEMORANDUM OPINION AND ORDER

Adopted: March 3, 2000

Released: March 14, 2000

By the Commission:

I. INTRODUCTION

1. The Commission has before it an Application for Review filed by Harry Soukiassian (Soukiassian) on May 18, 1995. Soukiassian seeks Commission review of the dismissal by the former Private Radio Bureau, Licensing Division, Land Mobile Branch, of four applications for private carrier paging (PCP) facilities on 929.8375 MHz. The Branch initially dismissed Soukiassian's applications in a letter ruling on January 25, 1995,¹ and subsequently denied Soukiassian's petition for reconsideration on April 18, 1995.² For the reasons discussed below, we deny the Application for Review.

II. BACKGROUND

2. On August 11, 1993, Soukiassian transmitted three applications for PCP facilities on 929.8375 MHz at 18 sites in the Los Angeles area to the National Association of Business and Educational Radio (NABER), the 929 MHz frequency coordinator.³ On October 5, 1993, NABER returned the applications to Soukiassian because they did not include antenna height information required on the

¹ Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Kathleen A. Kaercher (counsel to Soukiassian), January 12, 1995.

² Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Kathleen A. Kaercher, April 18, 1995.

³ Letter from Kathleen A. Kaercher, to NABER, August 11, 1993. Commission rules applicable at the time required all PCP applications to be submitted to NABER (now PCIA) for coordination prior to filing with the Commission. *See* 47 C.F.R. § 90.127(a) (1993) ("All applications for private land mobile licenses that require both frequency coordination and fees . . . must first be sent to the certified coordinator for the frequency concerned.").

application form.⁴ In its letter, NABER also stated that 929.8375 MHz was licensed on a nationwide basis to Arch Southeast Communications, Inc. (Arch), and that Soukiassian would be required to provide a letter of concurrence from Arch in order for NABER to coordinate the application.⁵

3. On October 21, 1993, the Commission adopted the *PCP Exclusivity Order* in PR Docket 93-135, which established new procedures for licensing most 929 MHz PCP frequencies, including 929.8375 MHz, on an exclusive basis. The new procedures replaced the prior rules that had provided for licensing of 929 MHz frequencies on a shared basis.⁶ In the *PCP Exclusivity Order*, the Commission determined that PCP applications filed with the Commission through October 14, 1993 would be licensed on a grandfathered basis, entitling the applicant to share the frequency with any licensee that subsequently qualified for exclusive use of that frequency.⁷ However, applicants filing with the Commission after October 14, 1993 could not obtain frequencies on a grandfathered shared basis where a prior applicant had already qualified for exclusivity under the new rules.⁸

4. On October 27, 1993, after the Commission's cut-off for grandfathered applications, Soukiassian resubmitted his three applications to NABER with the antenna height information included, and requested that they be coordinated and forwarded to the Commission for processing.⁹ In its letter to NABER, Soukiassian's counsel also stated that Soukiassian was not required to obtain Arch's concurrence to the applications because Arch did not have the right to nationwide use of 929.8375 MHz.¹⁰ On October 29, 1993, Soukiassian transmitted a fourth application to NABER, seeking frequency coordination to provide service on 929.8375 MHz at three additional sites.¹¹

5. On January 27, 1994, Soukiassian directed NABER to file its applications with the Commission, "with or without coordination."¹² NABER transmitted the applications to the Commission on January 31, 1994, indicating that it was doing so without having coordinated them.¹³ On January 12, 1995, the Branch dismissed Soukiassian's applications for lack of frequency coordination.¹⁴ On February 13, 1995, Soukiassian filed a petition for reconsideration of the Branch's decision. The Branch denied that petition on April 15, 1995,¹⁵ and Soukiassian filed the instant Application for Review on May 18, 1995.

⁴ Letter from Heather McCormack, NABER, to Kathleen A. Kaercher, October 5, 1993.

⁵ *Id.*

⁶ Amendment of the of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-135, *Report and Order*, 8 FCC Red 8318 (1993) (*PCP Exclusivity Order*).

⁷ *Id.* at n.64.

⁸ *Id.* at ¶ 31.

⁹ Letter from Kathleen A. Kaercher to NABER, October 27, 1993.

¹⁰ *Id.*

¹¹ Letter from Dennis C. Brown (counsel to Soukiassian) to NABER, October 29, 1993.

¹² Letter from Kathleen A. Kaercher to Jay Kitchen, NABER, January 27, 1994, at 3.

¹³ Letter from Heather McCormack, NABER, to Terry Fishel, Chief, Land Mobile Branch, January 31, 1994.

¹⁴ *See* note 1, *supra*.

¹⁵ *See* note 2, *supra*.

III. DISCUSSION

6. We conclude that the Branch correctly dismissed Soukiassian's applications. As noted above, under the *PCP Exclusivity Order*, applications to provide service on a grandfathered basis had to be filed with the Commission no later than October 14, 1993 to entitle an applicant to share the frequency with a licensee that qualified for exclusive use of that frequency.¹⁶ Soukiassian's applications were not filed with the Commission by this date. Soukiassian argues that he was unable to file by October 14 because NABER improperly rejected the applications he had submitted for coordination in August. Soukiassian contends that "there has been no suggestion or evidence that [his] applications [were] incomplete, inaccurate or contrary to the Commission's Rules,"¹⁷ and that NABER had no right to require that he obtain Arch's concurrence to the applications.¹⁸

7. We disagree with the assertion that Soukiassian's applications were suitable for coordination and filing. When Soukiassian initially submitted the applications to NABER in August 1993, they were incomplete on their face and therefore unacceptable for filing with the Commission. Because the applications omitted antenna height information required of all PCP applicants, NABER properly returned the applications to Soukiassian for correction.¹⁹ We also reject Soukiassian's contention that the return of the applications was improperly delayed by NABER "for greater than two months . . ." ²⁰ NABER received the three initial applications on August 16, 1993,²¹ and returned them for correction on October 5, 1993. Although the Commission generally "expect[s] that the speed-of-service for 90 percent of the coordination requests not exceed 20 work days,"²² the processing of some applications may take longer, and we find no basis in the record to conclude that NABER acted improperly. In any event, NABER returned the applications nine days before the October 14, 1993 cutoff, giving Soukiassian the opportunity to timely file, yet Soukiassian did not resubmit the applications to NABER until October 27, 13 days after the cutoff.²³ For the reasons stated above, we deny Soukiassian's Application for Review.²⁴

¹⁶ *PCP Exclusivity Order* at n.64.

¹⁷ Application for Review at 14.

¹⁸ *Id.* at 17.

¹⁹ Letter from Heather McCormack, NABER, to Kathleen A. Kaercher, October 5, 1993. At the time NABER returned the applications, frequency coordinators were "require[d] . . . to assure that applications are complete and that data items 1-25 on the Form 574 application are correct." Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, 103 FCC 2d 1093, 1103, ¶ 20 (1986) (*Frequency Coordination Order*).

²⁰ Application for Review at 8.

²¹ Letter from Richard Edwards, PCIA, to Richard J. Arsenault, Staff Attorney, WTB, December 7, 1999, at 1.

²² *Frequency Coordination Order*, 103 FCC 2d at 1108, ¶ 28.

²³ Soukiassian also contends that NABER's request that Soukiassian obtain concurrence from Arch delayed resubmission of the corrected applications. Letter from Kathleen A. Kaercher to Terry Fishel, Chief, Land Mobile Branch, March 17, 1994); Letter from Kathleen A. Kaercher to W. Riley Hollingsworth, WTB Office of Operations, October 25, 1995. However, there is no evidence that this caused any such delay. To the contrary, Soukiassian states that he "refused to attempt to obtain concurrence from Arch." Application for Review at 9 n.9. **Thus, regardless of the propriety of NABER's directive to obtain Arch's concurrence, that directive did not prejudice Soukiassian.**

²⁴ Arch filed "Comments on Application for Review" opposing the Application (Opposition) on November

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.115 and 90.127(d) of the Commission's Rules, 47 C.F.R. §§ 1.115 & 90.127(d), the application for review, filed by Harry Soukiassian on May 18, 1995, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

22, 1995. Soukiassian argues that the Opposition is untimely. Reply n.1, filed Nov. 30, 1994. Arch contends that its Opposition should be accepted as timely because the Application was not served on Arch. Even assuming that service was required, Arch has not demonstrated good cause for filing its Opposition on November 22, 1995. We therefore strike the Opposition as untimely.